

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

David Morrison,)	C/A NO. 4:07-1504-CMC-TER
)	
Plaintiff,)	
)	OPINION and ORDER
v.)	
)	
Michael Pettiford, Dr. Berrios,)	
S. Deese, Health Care Specialist,)	
Charles Harding, Unit Manager,)	
)	
Defendants.)	
_____)	

This matter is before the court on Plaintiff's *pro se* complaint, filed in this court pursuant to 42 U.S.C. § 1983. Plaintiff's complaint, however, is more correctly construed as a *Bivens*¹ action, and the court so construes Plaintiff's complaint. Plaintiff is a federal inmate currently housed at FCI – Bennettsville, South Carolina. Plaintiff seeks monetary and injunctive relief for certain alleged violations of his constitutional rights.

In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02 (B)(2)(d), DSC, this matter was referred to United States Magistrate Judge Thomas E. Rogers, III, for pre-trial proceedings and a Report and Recommendation ("Report"). On December 18, 2007, the Magistrate Judge issued a Report recommending that the complaint be dismissed due to Plaintiff's failure to exhaust his administrative remedies. The Magistrate Judge advised Plaintiff of the procedures and requirements for filing objections to the Report and the serious consequences if he failed to do so. Plaintiff filed objections to the Report on January 7, 2008.

¹*Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *See Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of any portion of the Report of the Magistrate Judge to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b).

After reviewing the record of this matter, the applicable law, the Report and Recommendation of the Magistrate Judge, and Plaintiff's objections, the court agrees with the conclusions of the Magistrate Judge. Accordingly, the court adopts and incorporates the Report and Recommendation by reference in this Order. Plaintiff's failure to properly exhaust his administrative remedies precludes this suit. *Woodford v. Ngo*, 548 U.S. ___, ___, 126 S. Ct. 2378, 2383 (2006). Therefore, Defendants' motion to dismiss is **granted** and this matter is dismissed without prejudice. All other pending motions are **moot**.

IT IS SO ORDERED.

s/ Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
UNITED STATES DISTRICT JUDGE

Columbia, South Carolina
January 11, 2008

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